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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/868,040	07/23/2001	Kenichi Otani	209313US3PCT	5365

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EXAMINER

MAI, TRI M

ART UNIT PAPER NUMBER

3727

DATE MAILED: 07/07/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/868,040

Applicant(s)

OTANI ET AL.

Examiner

Tri M. Mai

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 11-36 is/are pending in the application.
- 4a) Of the above claim(s) 13, 14, 16 and 18-34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11, 12, 15, 17, 35 and 36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☒ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

1. Claims 13, 14, 16, 18-34 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, as set forth in the previous Office Action.

***Claim Rejections - 35 USC § 112***

2. Claims 11, 12, 15, 17, 35, and 36 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The original disclosure does not teach the corner having an approximately uniform thickness.
3. Claims 11, 12, 15, 17, 35 and 36 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear what constitute a uniform thickness corner as set forth by the claims. Fig. 2 shows the corners do not have a uniform thickness with respect to the middle portion have a substantially greater thickness than that at its distal ends where it attach to the side portions.

***Claim Rejections - 35 USC § 103***

4. Claims 11, 12, 15, 17, 35 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Kieckhefer (2530124) or Clay (2042210). Kieckhefer teaches a pulp container (col. 2, lines 9) having a bottom portion and a body portion, with an angle of approximately 83 degrees (col. 1, lines 58-60) at the corners at portions 11 and 12 whose thickness is greater than a thickness of other portions at 4 and 5.

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It would have been obvious to one of ordinary skill in the art to provide an angle at 85 degrees to provide the desired angle for the cup.

Clay teaches a pulp container (col. 1, line 4) having a bottom portion and a body portion, with an angle of approximately 85 degrees as shown in Fig. 6, and corners as shown in Fig. 4 whose thickness is greater than a thickness of other portions.

It would have been obvious to one of ordinary skill in the art to provide an angle at 85 degrees in Clay to provide the desired angle for the tray.

With respect to the new limitation of the corner being continuously tapering into the thickness T1, the corner of Clay meets this limitation, i.e., it continuously tapering into the a thickness T1 from the corner's two ends. The claims do not specify exactly where the tapering occurs from the corner.

Regarding claim 12, the molded container of either Kieckhefer or Clay inherently has a density  $\rho_2$  being smaller than  $\rho_1$  at portions 5 and 4 due to the molding process.

With respect to the body being 50 mm or more, it would have been obvious to one of ordinary skill in the art to provide the body 13 of the claimed dimension, since a change in size/proportion is generally recognized as being within the level of ordinary skill in the art. ( see In re Rose, 105 USPQ 237 (CCPA 1955), and In re Tanczyn, 44 CCPA 704, 766, 241).

It would have been obvious to one of ordinary skill in the art to make the cup of Kieckhefer or the tray of Clay with a body more than 50mm to provide the desired volume.

Regarding claim 15, it would have been obvious to one of ordinary skill in the art to make thickness T1 being .1 mm or more, and T2/T1 being 1.5-2.0 to provide the desired protection at the corner of the container.

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Regarding claim 17, it would have been obvious to one of ordinary skill in the art to make the container with the relationship of  $.1 \times \rho_1 < \rho_2 < \rho_1$  the desired density protection at the corner of the container.

5. Claims 11, 12, 15, 17, 35, and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Kieckhefer or Clay, in view of either Hatch or Taylor. To the degree it is argued either Kieckhefer or Clay do not teach the angle being greater than 85 degrees, Hatch teaches the angle can be 85 degrees (col.2, line 25), i.e., angle 30 can be about five degrees. Likewise, Taylor teaches that it is known in the art to construct a molded paper container with 90 degrees angle as shown in Figs 2-3. It would have been obvious to one of ordinary skill in the art to make the container of Kieckhefer or Clay with an angle being 85 degrees or more to as taught by either Hatch or Taylor provide the desired shape and/or volume of the container.

#### *Response to Arguments*

6. Applicant's arguments filed 04/16/03 have been fully considered but they are not persuasive. With respect to the rejection of either Clay or Kieckhefer, Kieckhefer teaches the wall 4 is approximately 7 degrees angle from the axis of the cone. The term "approximation" can be interpreted as broadly as 5 degrees and that would make the angle 85 degrees as claimed.

Regarding the Clay reference, Fig. 6 shows the angle of the wall respect to the bottom about 90 degrees.

Clearly providing the angle between the sidewall to the bottom wall of 85 degrees or more requires only ordinary skill in the art.

Furthermore, Hatch teaches the angle can be 85 degrees (col.2, line 25), i.e., angle 30 can be about five degrees. Likewise, Taylor teaches that it is known in the art to construct a molded

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paper container with 90 degrees angle as shown in Figs 2-3. It would have been obvious to one of ordinary skill in the art to make the container of Kieckhefer or Clay with an angle being 85 degrees or more to as taught by either Hatch or Taylor provide the desired shape and/or volume of the container.

Applicant asserts that the combination fails to provide a prima facie case of obviousness. However, applicant fails to point out exactly what is missing from the combined reference. The claim broadly recites "a molded article". All of the applied references are molded articles as set forth by the claims.

With respect to the differences in density, one of ordinary skill in the art would recognize that the density has a direct relationship with the volume being compressed during the pressing process. An area being compressed more, smaller thickness (at the side portion) would inherently have a greater density than the area in the corner where the paper is compressed less because of the greater thickness.

### *Conclusion*

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37


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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (703)308-1038. The examiner can normally be reached on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W Young can be reached on (703)308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are (703)305-3579 for regular communications and (703)305-3579 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-1148.

Tri M. Mai   
Primary Examiner  
Art Unit 3727

July 2, 2003